Connecticut State Medical Society

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Connecticut State Medical Society Testimony
House Bill 5296 An Act Concerning the Definition of Medical Necessity
Human Services Committee
March 11, 2010

Senator Doyle, Representative Walker and members of the Human Services Committee, on behalf of the more than 7,000 members of the Connecticut State Medical Society (CSMS) thank you for the opportunity to present this testimony to you today on House Bill 5296 An Act Concerning the Definition of Medical Necessity. This is an issue on which CSMS is deeply concerned as it contains the potential to impact the some of the most compromised patients seen by our members.

Any definition of medical necessity must protect the need for an individualized evaluation and determination by the treating physician of what is medically necessary for the patients. It is imperative that any determination be made by the treating physician and that it is made in the best interest of the patient's medical care in the physicians best judgments. A definition must be based on the premise that if determined by the physician there is a presumption of medical necessity.

CSMS was involved in the settlement of several lawsuits in which most of the nation's largest insurers agreed to a standard and relatively consistent definition of medical necessity. Although there are small word variations, these definitions are almost identical to the definition forward to this committee by the Medical Inefficiency Committee established by Public Act 09-7. Their recommendations allow for a standard of care, as well as a flexibility associated with the patient's medical condition(s) and treatment protocol. A similar definition also was codified for commercial health plans in Connecticut in Public Act 07-75. Subsequently CSMS presented testimony to this Committee raising concerns about a definition of medical necessity proposed by the Department of Social Services in Senate Bill 32. That language would eviscerate the current definition of medical necessity in the Medicaid program and pre-empt the work of the Medical Inefficiency Committee.

CSMS supports the intent of House Bill 5296 An Act Concerning Medical Necessity. We do understand that amendments will be proposed by the Medical Inefficiency Committee to ensure consistency with their proposal and improve efficiency while protecting 450,000 vulnerable Medicaid enrollees. We support the Committee's recommendations.

Attached for your review are copies of a February 3, 2010 letter from CSMS to the Medical Inefficiency Committee as well as testimony presented to the Committee at a public hearing on February 8, 2010. We believe this material provides you appropriate detail regarding our position related to any definition of medical necessity. There are substantial advantages in having a uniform definition of medical necessity for providers participating in various programs.

At a minimum, however, the Medicaid population should be afforded at least the same protections as the commercial managed care population under law. All Connecticut residents deserve the same quality of care regardless of their financial means.

Thank you for the opportunity to present this testimony to you today.

Connecticut State Medical Society

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February 3, 2010

Mr. Kevin Kinsella, Co-Chair
Ms. Alicia Woodsby, Co-Chair
Medical Inefficiency Committee
Human Services Committee
Legislative Office Building
Hartford, CT 06106

Dear Mr. Kinsella and Ms. Woodsby:

On behalf of the more than 7,000 physician members of the Connecticut State Medical Society (CSMS), thank you for the opportunity to provide comment regarding an appropriate definition of "medical necessity" within state programs, and the Medicaid program in particular. First and foremost, it is imperative that any determination of what is medically necessary for a patient be made by the treating physician and that it is made in the best interest of the patient's medical care in the judgment of that treating physician. Furthermore, any definition must be based on the premise that, if determined to be present by the physician, there is a presumption of medical necessity.

Over the past few years, CSMS was involved in the settlement of several lawsuits in which most of the nation's largest insurers agreed to a standard and relatively consistent definition of medical necessity. Although there are small word variations, these definitions are almost identical to the one proposed by the Committee that allow for a certain standard of care, as well as flexibility associated with the patient's medical condition(s) and treatment protocol. A similar definition also was codified for commercial health plans in Connecticut in Public Act 07-75.

Another important requirement is that medically necessary services include the actual treatment of a condition, as well as services for the purposes of preventing, evaluating, diagnosing and/or treating an illness, injury, disease or its symptoms. Any definition of medical necessity must reflect this. We believe the committee's proposed definition does just this and protects the need for an individualized evaluation and determination by the treating physician of what is medically necessary for the patient at that point in time.

The Department of Social Services' (DSS) proposed standard, taken from the increasingly restrictive SAGA program, is neither patient-nor service-specific and is too expressly tied to cost reduction. This limits the effectiveness of the standard; and applying it will significantly reduce the quality of care for the over 400,000 Connecticut Medicaid enrollees. Although cost is an important factor in health-care decisions, physicians are ultimately concerned about care. Though they consider the financial impact on their patients, physicians must first address the

medical condition of the presenting patient and the best care should not be denied on the basis of cost. To do so would be discriminatory.

There are substantial advantages in having a uniform definition of medical necessity for providers participating in various programs. At a minimum, however, the Medicaid population, which is generally more vulnerable than the commercial population and possesses fewer resources to pay for denied services, should be afforded at least the same protections as the commercial managed care population is entitled to under state law, including the "therapeutic equivalence" standard for substituting a prescribed treatment that is applied to commercial plans. C.G.S. §38a-513c sets forth the standard of "equivalent therapeutic or diagnostic results," a standard which is broadly supported by national medical groups and has also been adopted by other states across the country. Proposed language based on "similarly effective" or "comparably effective," as proposed by DSS, provides less protection and is not consistent with maintaining quality of care for Medicaid recipients. CSMS believes that all Connecticut residents deserve the same quality of care regardless of their financial means.

Establishing one standard definition of medical necessity will help to ensure that patients and their physicians can determine in advance the most appropriate care with as little intrusion into the physician/patient relationship as possible, but certainly Medicaid enrollees are entitled to at least the protections already provided to commercial managed care enrollees.

Respectfully,

Matthew C. Katz
Executive Vice President

Connecticut State Medical Society

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Connecticut State Medical Society Testimony on
Appropriate Definition of Medical Necessity
Presented to Human Services Medical Inefficiency Committee
February 8, 2010

Mr. Kevin Kinsella and Ms. Alicia Woodsby and members of the Medical Inefficiency Committee, my name is Kathleen Lavorgna, MD, President of the Connecticut State Medical Society (CSMS). On behalf of our over 7,000 members, thank you for the opportunity to submit this testimony to you today on an appropriate definition of "medical necessity" within state programs, in particular the Medicaid program.

CSMS supports the Committee's proposed definition. It protects the need for an individualized evaluation and determination by the treating physician of what is medically necessary for the patient.

It is imperative that any determination of what is medically necessary for a patient be made by the treating physician and that it is made in the best interest of the patient's medical care in the judgment of that treating physician.

A definition must be based on the premise that, if determined to be present by the physician, there is a presumption of medical necessity.

CSMS was involved in the settlement of several lawsuits in which most of the nation's largest insurers agreed to a standard and relatively consistent definition of medical necessity. Although there are small word variations, these definitions are almost identical to the one proposed by the Committee that allow for a certain standard of care, as well as flexibility associated with the patient's medical condition(s) and treatment protocol. A similar definition also was codified for commercial health plans in Connecticut in Public Act 07-75.

To our knowledge, insurers have complied with the Connecticut Law and we know that individually plans for the past 2 to 5 years depending on the settlement have used the definition to make determinations without the appearance of any problem

Conversely, The Department of Social Services' (DSS) proposed standard is neither patient-nor service-specific and is tied to cost reduction. This limits the effectiveness of the standard; and applying it will significantly reduce the quality of care for the over 400,000 Connecticut Medicaid enrollees.

At a minimum, the Medicaid population should be afforded at least the same protections as the commercial managed care population is entitled to under state law, including the "therapeutic equivalence" standard for substituting a prescribed treatment that is applied to commercial plans. C.G.S. §38a-513c sets forth the standard of "equivalent therapeutic or diagnostic results," a standard which is broadly supported by national medical groups and has also been adopted by other states across the country.

Proposed language based on "similarly effective" or "comparably effective," as proposed by DSS, provides less protection and is not consistent with maintaining quality of care for Medicaid recipients. CSMS believes that all Connecticut residents deserve the same quality of care regardless of their financial means.

Establishing one standard definition of medical necessity will help to ensure that patients and their physicians can determine in advance the most appropriate care with as little intrusion into the physician/patient relationship as possible, but certainly Medicaid enrollees are entitled to at least the protections already provided to commercial managed care enrollees.